

FISCAL IMPACT ANALYSIS

Date of Submission to OSBM: February 29, 2012

Agency Proposing Rules: NC Medical Care Commission
Division of Health Service Regulation (DHSR)

Agency Contacts:

Megan Lamphere	DHSR Rulemaking Coordinator	919-855-3781
Drexdal Pratt	DHSR Director	919-855-3752
Jeff Horton	DHSR Chief Operating Officer	919-855-3757

Fiscal Note Category: Tier 1—De Minimus Rules

Proposed Rule Actions & Fiscal Impact:

10A NCAC 14A .0102 Rulemaking Procedures

Statutory Authority:	G.S. 143B-10	
Fiscal Impact:	State Government:	None
	Local Government:	None
	Private Sector:	None

This rule outlines rulemaking procedures for DHSR and its Director. It also informs the public as to where Division rules may be obtained. The proposed changes to this rule are a result of Executive Order 70 as components of this rule have been determined to be outdated. The changes are considered technical changes and include updated statutory references and addresses. There is no anticipated fiscal impact on state or local government or on the private sector as a result of these changes.

10A NCAC 14A .0202 Request for Determination

Statutory Authority:	G.S. 143B-10	
Fiscal Impact:	State Government:	None
	Local Government:	None
	Private Sector:	None

This rule describes a person's right to request a determination of his legal rights, privileges, or duties as they relate to laws or rules administered by the Department. The proposed changes to this rule are a result of Executive Order 70 as the rule reference in (c) has been determined to be outdated. This change is considered a technical change and

provides the correct rule reference. There is no anticipated fiscal impact on state or local government or on the private sector as a result of these changes.

10A NCAC 14A .0204 Exceptions to Recommended Decision (repeal)

Statutory Authority: G.S. 143B-10
Fiscal Impact: State Government: None
 Local Government: None
 Private Sector: None

The proposed repeal of this rule is a result of Section 18 of Senate Bill 781, Session Law 2011-398. Section 18 of the law re-writes G.S. 150B-34 to remove the agency's ability to issue a "Final Agency Decision." The passage of this legislation eliminates the need for this rule, rendering it obsolete. There is no anticipated fiscal impact on state or local government or on the private sector as a result of the repeal of this rule.

10A NCAC 14A .0303 Initiating a Hearing

Statutory Authority: G.S. 143B-165(10)
Fiscal Impact: State Government: None
 Local Government: None
 Private Sector: None

This rule outlines the process for residents of nursing facilities to initiate an appeal hearing related to transfer or discharge from the facility. The proposed changes to this rule are a result of Executive Order 70 as the rule reference in (a) has been determined to be outdated. The changes are considered technical changes and include the correct rule reference as well as modifications to the language as requested by the Rules Review Commission. There is no anticipated fiscal impact on state or local government or on the private sector as a result of these changes.

10A NCAC 14A .0304 Notice of Hearing

Statutory Authority: G.S. 143B-165(10)
Fiscal Impact: State Government: None
 Local Government: None
 Private Sector: None

This rule outlines the process for providing nursing facility residents and/or their representative notice of a hearing related to transfer or discharge from the facility. The proposed changes to this rule are a result of Executive Order 70 as the address provided is outdated. The changes are considered technical changes and include the correct address as well as modifications to the language as requested by the Rules Review Commission. There is no anticipated fiscal impact on state or local government or on the private sector as a result of these changes.

APPENDIX

Proposed Rule Text

10A NCAC 14A .0102 is amended without notice pursuant to G.S. 150B-21.5(a)(3)(4) as follows:

10A NCAC 14A .0102 RULEMAKING PROCEDURES

(a) The rulemaking procedures for the Secretary of the Department of Health and Human Services codified in ~~10A NCAC 01~~ 10A NCAC 01A Section .0100 are hereby ~~adopted~~ incorporated by reference including subsequent amendments and editions pursuant to ~~G.S. 150B-14(e)~~ G. S. 150B-21.6 to apply to the actions of the Director, with the following modifications:

- (1) Correspondence related to the Director's rulemaking actions shall be submitted to:

Director

Division of Health Service Regulation

2701 Mail Service Center

Raleigh, North Carolina ~~27699-2701~~ 27699-2701.

- (2) The Secretary's designee shall mean the Director of the Division of Health Service Regulation (hereinafter referred to as the Division).

- ~~(3) The "Division" shall be substituted for the "Office of General Counsel" in 10A NCAC 01.~~

- ~~(4)~~ (3) "Hearing officer" shall mean the Director of the Division of Health Service Regulation or his designee.

(b) Copies of ~~10A NCAC 01~~ 10A NCAC 01A Section .0100 may be inspected in the Division of Health Service Regulation at the address shown in (a)(1) of this Rule. Rules are available at no cost at the Office of Administrative Hearings internet website, <http://www.ncoah.com/rules>. ~~Copies may be obtained from the Office of Administrative Hearings, 424 North Blount Street, Raleigh, North Carolina, 27601.~~

History Note: Authority G.S. 143B-10; 150B-11; 150B-14;

Eff. November 1, ~~1989~~ 1989;

Amended Eff. June 1, 2012.

10A NCAC 14A .0202 is amended without notice pursuant to G.S. 150B-21.5(a)(3) as follows:

10A NCAC 14A .0202 REQUEST FOR DETERMINATION

(a) In accordance with G.S. 150B-2(2), any person may request a determination of his legal rights, privileges, or duties as they relate to laws or rules administered by the Department. All requests must be in writing and contain a statement of the facts prompting the request sufficient to allow for ~~appropriate~~ processing by the Department.

(b) Any person seeking such a determination must exhaust all informal procedures available before requesting a hearing under G.S. 150B-23.

(c) All petitions for hearings regarding matters under the control of the Department shall be filed with the OAH in accordance with G.S. 150B-23 and 26 NCAC 3 ~~.0003~~, .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the Department. A list of registered agents may be obtained from the Office of General Counsel at 2001 Mail Service Center, Raleigh, North Carolina, 27699-2001.

History Note: Authority G.S. 143B-10; 150B-11; 150B-22; 150B-23;
Eff. November 1, ~~1989~~, 1989;
Amended Eff. June 1, 2012.

10A NCAC 14A .0204 is proposed for repeal as follows:

10A NCAC 14A .0204 EXCEPTIONS TO RECOMMENDED DECISION

History Note: Authority G.S. 143B-10; 150B-11; 150B-36; 150B-37;
Eff. November 1, ~~1989~~, 1989;
Repealed Eff. June, 1, 2012.

10A NCAC 14A .0303 is amended without notice pursuant to G.S. 150B-21.5(a)(5) as follows:

10A NCAC 14A .0303 INITIATING A HEARING

(a) In order to initiate a hearing with the Hearing Officer, a resident must first have been served by the facility administrator with a written Notice of Transfer or Discharge and must file a Request for Hearing. ~~Hearing in accordance with the Rules in 10 NCAC 14A .0300.~~ The Request for Hearing must be in writing and must be signed by the resident. A Request for Hearing form shall be provided to the resident by the facility for this purpose.

(b) The hearing is a mechanism for listening to appeals by residents concerning disputes over transfers and discharges. The hearing shall be narrowly focused on discharge and transfer issues between the nursing facility and the resident and shall not involve Medicaid matters such as eligibility, which is the responsibility of the Medicaid hearing officer.

(c) Should an appeal of the Notice of Transfer or Discharge be desired, a Request for a Hearing, accompanied by the Notice of Transfer or Discharge, shall be served to the Hearing Officer and must be received by him no later than 11 days from the date of the facility's Notice of Transfer or Discharge. If the request for hearing has not been received within 11 days, the resident ~~shall waive~~ has waived his right to appeal. ~~The resident must be notified~~ Hearing Officer must notify the resident of the option for the hearing to be in person (face-to-face) or by telephone.

(d) The facility administrator must make available to the resident information and records at least five working days prior to the hearing to enable an opportunity for review and preparation. The facility administrator must forward identical information relevant to the transfer or discharge to the agency, to be received at least five working days prior to the hearing. A resident must authorize release of his medical records to the hearing officer.

*History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.12; G.S. 143B-165(10);
Eff. August 3, ~~1992~~ 1992;
Amended Eff. June 1, 2012.*

10A NCAC 14A .0304 is amended without notice pursuant to G.S. 150B-21.5(a)(4) as follows:

10A NCAC 14A .0304 NOTICE OF HEARING

Upon receipt of a timely request for a hearing, the Hearing Officer shall ~~promptly~~ notify all parties (the facility administrator, the resident, and ~~either an immediate family member, if known or if an immediate family member is not known, the authorized representative~~ the resident's legal representative or responsible person as documented in the resident's record) of receipt of the Request and shall arrange with the parties a time, date, and telephone numbers (if by phone conference). If the hearing is to be conducted in person (face-to-face), hearings ~~will~~ shall be held in the ~~Council Building, 701 Barbour Drive~~ Brown Building, 801 Biggs Drive on the Dorothea Dix Campus in Raleigh, North Carolina, with time and date arranged with the parties by the hearing officer. ~~These parties will be served notice of the date of hearing.~~ The Hearing Officer shall serve these parties with notice of the date of the hearing.

*History Note: Authority 42 U.S.C.S. 1396r(e)(3) and (f)(3); 42 C.F.R. 483.12; G.S. 143B-165(10);
Eff. August 3, ~~1992~~ 1992;
Amended Eff. June 1, 2012.*